

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

FEB 1 2016

OFFICE OF
MANAGING DIRECTOR

Davina S. Sashkin, Esq.
Fletcher, Heald & Hildreth
1300 North 17th Street, 11th Floor
Arlington, VA 22209

Licensee/Applicant: **Southern TV Corporation**
Waiver and Deferral of Payment; Financial
Hardship
Disposition: **Dismissed and Denied** (47 U.S.C. §
159(c)(2); 47 C.F.R. §§ 1.1164(e), 1.1166,
1.1167(b), 1.1910)
Stations: WGCW-LP, Facility ID 130085, WGSA,
Facility ID 69446, W41CR, Facility ID 69450, and
W32BJ, Facility ID 69449
Fee: Fiscal Year (FY) 2015 Regulatory Fees
Date Request Submitted: Sep. 24, 2015
Date Regulatory Fees Paid: Not paid
Fee Control No.: RROG-15-00016064
Demand for Payment of Delinquent Debts

Dear Counsel:

This responds to Licensee's *Request*¹ for a "waiver and/or deferment of its obligation to pay" the Fiscal Year (FY) 2015 regulatory fees on grounds of financial hardship, even though Licensee submitted the *Request* without either the required separate petition to defer payment or the required supporting financial documentation.² We dismiss on several separate grounds, including that Licensee failed to comply with the Commission's rules for filing and the rules for petitioning to defer payment and to waive the fee, and because Licensee is a delinquent debtor. In the alternative, we deny the *Request* because Licensee failed to establish for either the petition to defer payment of the regulatory fees or the petition to waive the fees, both good cause shown and that the relief in each instance would promote the public interest. Finally, we demand full payment of the required regulatory fees and the accrued penalty and additional charges.

¹ Letter from Davina S. Sashkin, Esq., Fletcher, Heald & Hildreth, 1300 North 17th St., 11th Floor, Arlington, VA 22209 to FCC, Office of the Managing Director, 445 12th St. S.W., Room 1-A625, Washington, DC 20554 (Sep. 24, 2015) (*Request*). Licensee's submission to the Office of the Managing Director, Room 1-A625, does not comply with the Commission's rule requiring filing with the Commission's Secretary (47 C.F.R. § 1.1166(a)(2)).

² 47 C.F.R. § 1.1166(c) ("[w]aiver requests that do not include the required fees ... will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship."). As explained below, Licensee's failure to provide both the petition to defer payment with supporting documentation and the documentation to support the petition for a waiver are separate grounds for dismissal and imposition of the statutory penalty and additional charges of collection.

Background

On September 24, 2015, Licensee submitted to the Commission's Office of the Managing Director the *Request* asserting, in relevant part, that it "hereby respectfully requests waiver and/or deferment of its obligation to pay regulatory fees due September 24, 2015 for [four enumerated stations] for reasons of financial hardship. * * * [Licensee] experienced financial hardship in 2014, a fact which will be confirmed by forthcoming financial documentation and a declaration from [Licensee's] president. [Licensee] therefore respectfully requests relief from payment of the FY 2015 regulatory fees due ... based on financial hardship."³ Licensee referred to Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, 5345-46 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995) to acknowledge that the Commission "considers waivers on a fact-specific, case-by-case basis" as to "whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public."⁴ Even so, Licensee failed to submit any financial documentation (or the declaration) either on September 24, 2015, or at a later time, with or without moving for leave to file out of time. Moreover, Licensee is a delinquent debtor.

The Commission's records show that on October 17, 2014, the Commission dismissed Licensee's request to waive payment of the FY 2014 regulatory fees and notified Licensee it had to pay the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. §§ 1.1157(c)(1) and 1.1164, and that the Commission would assess interest, penalties, and charges of collection required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940.⁵ Furthermore, the Commission admonished Licensee,

Until the Commission receives the full amounts due, Licensee remains a delinquent debtor, and we are required to dismiss any application that Licensee has pending or that it will file. Additional statutory charges continue to accrue.

Furthermore, this notifies Licensee that under 31 U.S.C. § 3711(g), without further notice, and usually within 180 days or less of delinquency, we will transfer the delinquent debt to Treasury, which will initiate collection action through private collection activities and assess additional charges. In addition, we may refer the debt to the Department of Justice, which may result in litigation and additional costs.

Moreover, under 31 U.S.C. § 3716, 31 C.F.R. § 285.5, and 47 C.F.R. § 1.1912, some or all of the debt may be collected by non-centralized or centralized administrative offset. Also, under 31 U.S.C. § 3711(e), this debt and Licensee's payment history will be reported to credit reporting information bureaus. Because we have furnished notice here, Licensee may not receive another notification of

³ *Request* at 1-2.

⁴ *Id.* at 1.

⁵ Letter from Mark Stephens, Chief Financial Officer, FCC, Washington, DC 20554 to Davina S. Sashkin, Esq., and Peter Tannenwald, Esq., Fletcher, Heald & Hildreth, 1300 North 17th St., 11th Floor, Arlington, VA 22209 (Oct. 17, 2014).

this process. Finally, Licensee will be red lighted⁶ until it pays the debt or makes other satisfactory arrangements. [footnote deleted]

On September 24, 2015, the date of the *Request*, Licensee had not paid the FY 2014 annual regulatory fees and accrued charges,⁷ and, as set out below, the delinquent FY 2011 and FY 2012 annual regulatory fees. Indeed, as to the delinquent FY 2014 annual regulatory fees, on January 6, 2016, the Commission sent Licensee a *Demand Letter*⁸ seeking payment of those fees, and providing notice to Licensee of the nature of the debt, certain rights, the consequences of nonpayment, and contact information. The *Demand Letter* warned, under 47 C.F.R. §§ 1.1164 and 1.1910, the Commission will dismiss a delinquent debtor's application.

The Commission's records also show that Licensee is delinquent in paying regulatory fees for FY 2011 and FY 2012 that followed our dismissals and denials of Licensee's requests for waiver of the FY 2011 regulatory fees and the FY 2012 regulatory fees (*Denial I*⁹ and *Denial II*¹⁰), and our demands for full payment of the debts. For example, in *Denial I*, we cautioned:

Payment of \$14,310.00 for the FY 2011 regulatory fee is now due. The regulatory fee must be filed together with a Form FCC 159 (copy enclosed) within 30 days from the date of this letter. If Licensee fails to pay the full amount due by that date, the debt is delinquent, and the statutory penalty of 25% of the unpaid fee,¹¹ and interest and applicable additional penalties required by 31 U.S.C. § 3717 will accrue from the date of this letter. Under the law,¹² the Commission will initiate collection proceedings.

And in *Denial II*, we admonished:

Payment of \$14,685.00 for the FY 2012 regulatory fees is now due. The regulatory fees must be filed together with a Form FCC 159 (copy enclosed) within 30 days from the date of this letter. If Licensee fails to pay the full amount due by that date, the debt is delinquent, and the statutory penalty of 25% of the

⁶ See 47 C.F.R. § 1.1910(b)(2) ("Action will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or request for authorization by any entity found to be delinquent in its debt to the Commission"); 47 C.F.R. § 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment.").

⁷ See Fee Filer is Open For Payment of FY 2014 Regulatory Fees, FY 2014 Regulatory Fee Due September 23, 2014, *Public Notice*, DA 14-1261 (Aug. 29, 2014).

⁸ Demand Letter from FCC, Washington, DC 20554 to Southern TV Corporation 401 Mall Blvd., Suite 201B, Savannah, GA 31406 (Jan. 6, 2016) (*Demand Letter*).

⁹ Letter from Mark Stephens, Chief Financial Officer, FCC to Peter Tannenwald, Esq. and Davina S. Sashkin, Esq., Fletcher, Heald & Hildreth, 1300 North 17th St., 11th Fl, Arlington, VA 22209 (Feb. 21, 2013) (*Denial I*).

¹⁰ Letter from Mark Stephens, Chief Financial Officer, FCC to Peter Tannenwald, Esq. and Davina S. Sashkin, Esq., Fletcher, Heald & Hildreth, 1300 North 17th St., 11th Fl, Arlington, VA 22209 (Mar. 20, 2013) (*Denial II*).

¹¹ 47 U.S.C. § 159(c)(1). See Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, 5346 ¶ 35 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995) (1994 *Report and Order*) ("the petitioner will have 30 days to [pay the fee] in order to avoid the assessment of penalty charges and the invocation of any other available remedy. The filing of a petition for reconsideration will not toll this 30-day period.").

¹² See 47 C.F.R. § 1.1901, *et seq.*

unpaid fee,¹³ and interest and applicable additional penalties required by 31 U.S.C. § 3717 will accrue from the date of this letter. Under the law,¹⁴ the Commission will initiate collection proceedings.

Our records show that Licensee remains a delinquent debtor.

Standards

The Commission's rules set forth the well established procedures for assessing and collecting annual regulatory fees, the consequences of failing to make timely complete payment, and the procedures for submitting petitions to defer payment and petitions to waive payment of an annual regulatory fee. Licensees are expected to know these rules and procedures¹⁵ as well as the consequences for failing to pay an annual regulatory fee in a timely manner.

For example, 47 U.S.C. § 159 and the Commission's rules require that we "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,¹⁶ and when the required payment is received late or it is incomplete, to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."¹⁷ Specifically, "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner."¹⁸ Additionally, the Commission's rules establish procedures for, among other matters, payment, waivers, reductions, and deferral, payment, refunds, error claims, and penalties.¹⁹

In certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee, and it may be waived, reduced, or deferred upon a showing of *good cause*²⁰ and a finding that the *public interest will be served thereby*.²¹ The applicant has the burden of demonstrating relief is warranted,²² i.e., that special circumstances warrant a deviation from the general rule to collect the regulatory fee, and that the deviation will serve the public interest.²³ Specifically, the Commission's rule at 47 C.F.R. § 1.1166 provides,

The fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest. ... (a) ... All such filings within the

¹³ 47 U.S.C. § 159(c)(1). See 1994 Report and Order, 9 FCC Rcd 5346, ¶ 35.

¹⁴ See 47 C.F.R. § 1.1901, et seq.

¹⁵ 47 C.F.R. § 0.406; see *Life on the Way Communications, Inc., Forfeiture Order* 30 FCC Rcd 2603, 2607 (2015).

¹⁶ 47 U.S.C. § 159(a)(1); 47 C.F.R. § 1.1151.

¹⁷ 47 U.S.C. § 159(c)(1); 47 C.F.R. §§ 1.1157(c)(1), 1.1164.

¹⁸ 47 C.F.R. § 1.1164.

¹⁹ See 47 C.F.R. Part 1, Subpart G.

²⁰ 47 C.F.R. § 1.3.

²¹ 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166 ("The fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest."). See also 1994 Report and Order, 9 FCC Rcd at 5344; *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

²² *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

²³ *Northeast Cellular*, 897 F.2d at 1166.

scope of the fee rules shall be filed as a separate pleading and clearly marked to the attention of the Managing Director. Any such request that is not filed as a separate pleading will not be considered by the Commission. ... (2) If no fee payment is submitted, the request should be filed with the Commission's Secretary.

The applicant must file the petition to defer before the due date to avoid late-payment penalties,²⁴ and the filing must show extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission's regulatory costs.²⁵ A "sufficient showing of financial hardship"²⁶ is more than "[m]ere allegations or documentation of financial loss, standing alone. Rather, we will grant a waiver only when the impact of the regulatory fee will affect a regulatee's ability to serve the public. It [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."²⁷ Relevant financial documents include the licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of the licensee's officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. On this information, the Commission considers on a case-by-case basis whether the licensee met the standard to show the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.²⁸

Moreover, an applicant must follow the Commission's procedures to ensure the two petitions are filed. For example, 47 C.F.R. §§ 0.401, 1.7, and 1.1166 establish the proper location for filing waiver and refund requests and the consequence of dismissal for failing to comply with those rules. The Commission has designated specific offices to receive and certain matters, thus a

²⁴ Procedures For Filing Waivers, Reductions and Deferments of Regulatory Fees, Sep. 14, 2015), 2015 WL 5405041 (F.C.C.)

A request for waiver, reduction or deferral must be received before the fee due date. A request for a waiver or reduction in fees must be accompanied by a fee payment by the due date. If the licensee does not pay the fee, but includes a petition to defer payment, licensee must file both the request and separate petition to defer payment with the Commission's Secretary, along with the required supporting financial documentation. Submissions sent to other locations or directly to Commission staff may be dismissed. For example, a request sent by email to the Help Desk is improper, and it is not considered filed, and if the fee is unpaid, the unpaid fee amount is deemed delinquent, resulting in accrual of additional charges from the date of delinquency. Furthermore, the Commission will dismiss a waiver request filed by a delinquent debtor or a petition that does not have the required financial documentation.

²⁵ 1994 Report and Order, 9 FCC Rcd at 5344 ¶ 29; Phoenix Broadcasting, Inc. Stations KSWD and KPFN Seward, Alaska, Memorandum Opinion and Order, 18 FCC Rcd 26464, 26446, ¶¶ 5-6 (2003) (*Phoenix Broadcasting*) ("Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public. ... [I]n the absence of a documented showing of insufficient funds to pay the regulatory fees, [applicant] has not made a compelling showing that overrides the public interest in the Commission's recouping the costs of its regulatory activities.").

²⁶ Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, Memorandum Opinion and Order, 10 FCC Rcd 12759, 12761-62, ¶ 13 (1995) (*FY 1994 MO&O*).

²⁷ *Id.*

²⁸ *Id.*

request for relief is *filed* only upon receipt at the location designated by the Commission.²⁹ As such, under 47 C.F.R. § 1.1166,³⁰ a petition to defer payment and a petition to waive a regulatory fee, each properly supported by the required documentation, must be *filed* with the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, D.C. 20554 by mailing or otherwise delivering a hard copy of the documents to Office of the Secretary.

Even after proper filing, the applicant must ensure that the information is current and accurate. Specifically, as set forth in 47 C.F.R. § 1.65, “[e]ach applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application ... whenever the information furnished in the pending application is no longer substantially accurate and complete in all significant respects, the applicant shall promptly as possible and in any event within 30 days ... amend the application ... so as to furnish such additional or corrected information”

“The term, application, includes in addition to petitions and applications elsewhere defined in the Commission’s rules, any request, as for assistance, relief, declaratory ruling, or decision, by the Commission or on delegated authority.”³¹ As part of the Commission’s established procedures, “[a]n application (including a petition for reconsideration or any application for review of a fee determination) ... will be examined to determine if the applicant has paid the appropriate application fee, appropriate regulatory fees, is delinquent in its debts owed the Commission, or is debarred from receiving Federal benefits (*see, e.g.*, 31 CFR 285.13; 47 CFR part 1, subpart P).”³² Furthermore, “[a]pplications by any entity found not to have paid the proper application or regulatory fee will be handled pursuant to the rules set forth in 47 CFR part 1, subpart G.”³³ Additionally, “[a]ction will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or requests for authorization by any entity found to be delinquent in its debt to the Commission (*see* §1.1901(i))³⁴ ... If a delinquency has not been paid or the debtor has not made other satisfactory arrangements within 30 days of the date of the notice provided pursuant to paragraph (b)(2) of this section, the application or request for authorization will be dismissed.”³⁵ Consistent with 47 U.S.C. § 159(c)(2) and 47 C.F.R. §§ 1.1164, 1.1166, and 1.1910, when an applicant for relief is delinquent

²⁹ 47 C.F.R. § 1.7 (“pleadings and other documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission.”).

³⁰ 47 C.F.R. § 1.1166(a)(2) (“If no fee payment is submitted, the request [for waiver and deferral] should be filed with the Commission’s Secretary.”).

³¹ 47 C.F.R. § 1.1901(d).

³² 47 C.F.R. § 1.1910(a)(1).

³³ 47 C.F.R. § 1.1910(b)(1).

³⁴ 47 C.F.R. § 1.1910(b)(2).

³⁵ 47 C.F.R. § 1.1910(b)(3).

in paying the regulatory fee, the Commission will dismiss³⁶ the request for relief and impose the statutory penalty.³⁷

Discussion

We dismiss and deny because Licensee failed to comply with the Commission's rules. As we discuss, below, each point is a separate ground for dismissal or, in the alternative, denial.

First, Licensee failed to comply with our rules at 47 C.F.R. §§ 0.401, 1.7, 1.1159, and 1.1166 for filing the *Request*. It has not been filed. As our rules provide, the Commission maintains different offices for different purposes, and persons filing documents with the Commission must take care to ensure that their documents are filed at the correct location specified in the Commission's rules.³⁸ Applications and other filings not submitted in accordance with the correct addresses or locations will be returned to the filer without processing.³⁹ A document is filed with the Commission upon its receipt at the location designated by the Commission.⁴⁰ In this instance, Licensee never filed its *Request* with the Office of the Secretary, hence we dismiss because it was not filed timely in the proper location. Because the *Request* is dismissed, the fee was unpaid when due and delinquent. Hence, Licensee is subject to a late payment penalty of 25 percent of the unpaid amount, sanctions, including those set forth in section 1.1910 of our rules, and processing and handling of the delinquent debt pursuant to the Debt Collection Improvement Act, as amended, and our rules⁴¹ that include assessment of interest, penalties, charges of collection, and referral to the U.S. Treasury for further collection action.

Furthermore, as set forth at 47 C.F.R. § 1.1166(d), Licensee's failure to provide a separate petition to defer payment due to financial hardship, supported by documentation of the financial hardship, is a separate reason for dismissal.

As a separate third ground, Licensee failed to provide financial documentation to support the petition to waive the regulatory fees. Without supporting documentation, Licensee's *Request*

³⁶ 47 U.S.C. § 159(c)(2) ("The Commission may dismiss any application or other filing for failure to pay in a timely manner any fee or penalty under this section."); 47 C.F.R. §§ 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment."); 1.1166(c) ("Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.").

³⁷ 47 U.S.C. § 159; 47 C.F.R. § 1.1166; *Waivers, Reductions and Deferrals of Regulatory Fees, Regulatory Fees Fact Sheet* (Sep. 5, 2013) 2013 WL 4773993 (F.C.C.) ("The Commission will dismiss any petition for waiver of a regulatory fee that does not include a payment or the required petition for deferral and supporting documentation, and under 47 U.S.C. § 159(c) and 31 U.S.C. § 3717, the Commission is required to impose the 25% penalty and other relevant charges. A request for waiver, reduction or deferral must be received before the fee due date. *** The Commission will dismiss a waiver request filed by a delinquent debtor or a petition that does not have the required financial documentation.").

³⁸ 47 C.F.R. § 0.401.

³⁹ *Id.*

⁴⁰ 47 C.F.R. § 1.7.

⁴¹ 47 U.S.C. § 159(c), 31 U.S.C. § 3701, *et seq.*, 47 C.F.R. Part 1, Subpart O, Collection of Claims Owed the United States.

rests on a mere assertion that fails to make a documented showing that payment of the fee will adversely impact Licensee's ability to serve the public. As the Commission has stated repeatedly, a mere allegation or documentation of financial loss, standing alone, does not suffice, it is the regulatee's obligation to fully document its financial position and show it lacks sufficient funds to pay the regulatory fee and to maintain service to the public.⁴² We note, Licensee failed to provide either the promised⁴³ financial documentation or the referenced declaration from its president.

As the fourth ground, Licensee is a delinquent debtor, and as such, under 47 U.S.C. § 159(c)(2) and 47 C.F.R. §§ 1.1157, 1.1164, and 1.1910, we dismiss.

Finally, in the alternative, we deny the *Request* because Licensee failed to provide any financial documentation or other evidence to support the bare assertion that it "experienced financial hardship in 2014."⁴⁴ As we explained, above, Licensee must make a documented showing that payment of the fee will adversely impact Licensee's ability to serve the public. A mere allegation or documentation of financial loss, standing alone, does not suffice, it is the regulatee's obligation to fully document its financial position and show it lacks sufficient funds to pay the regulatory fee and to maintain service to the public.⁴⁵ Licensee failed to meet our standard as set forth at 47 C.F.R. § 1.1166, to establish for both the petition to defer payment and the petition to waive the annual regulatory fees, both good cause shown and that each petition would promote the public interest.

Because we have dismissed and, in the alternative, denied the *Request*, on September 24, 2015, Licensee was delinquent in paying the annual regulatory fees on all stations. The statutory penalty of 25% of the unpaid fees accrued as of the date of delinquency, and from that date, we will assess the interest, penalties, and charges of collection provided for at 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. This is a demand for the immediate payment of Licensee's delinquent debts.

Moreover, we admonish Licensee, until the Commission receives the full amounts due, Licensee remains a delinquent debtor, and we are required to dismiss any application that Licensee has pending or that it will file. Additional statutory charges continue to accrue. Furthermore, this notifies Licensee that under 31 U.S.C. § 3711(g), without further notice, and usually within 120 days or less of delinquency, we will transfer the delinquent debt to Treasury, which will initiate collection action through private collection activities and assess additional charges. In addition, we may refer the debt to the Department of Justice, which may result in litigation and additional costs.

Moreover, under 31 U.S.C. § 3716, 31 C.F.R. § 285.5, and 47 C.F.R. § 1.1912, some or all of the debt may be collected by non-centralized or centralized administrative offset. Also, under 31 U.S.C. § 3711(e), this debt and Licensee's payment history will be reported to credit reporting information bureaus. Because we have furnished notice here, Licensee may not receive

⁴² *Phoenix Broadcasting, Inc.*, 18 FCC Rcd at 26465.

⁴³ *Request* at 2 ("financial hardship ... will be confirmed by forthcoming financial documentation and a declaration from [Licensee's] president.").

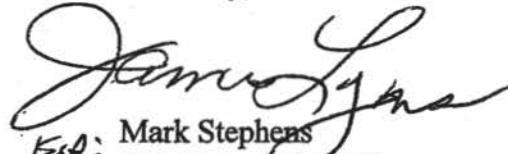
⁴⁴ *Id.*

⁴⁵ *Phoenix Broadcasting, Inc.*, 18 FCC Rcd at 26465.

another notification of this process. Finally, Licensee will be red lighted⁴⁶ until it pays the debt or makes other satisfactory arrangements.⁴⁷

If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,


For: Mark Stephens
Chief Financial Officer

⁴⁶ See 47 C.F.R. § 1.1910(b)(2) ("Action will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or request for authorization by any entity found to be delinquent in its debt to the Commission"); 47 C.F.R. § 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment.").

⁴⁷ See 47 C.F.R. § 1.1914 ("If a debtor is financially unable to pay a debt in one lump sum, the Commission, in its sole discretion, may accept payment in regular installments.").

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

SEP 25 2015

OFFICE OF
MANAGING DIRECTOR

Steven M. Greeley, Owner
My Radio Central
1845 McCulloch Blvd., Suite A-14
Lake Havasu City, AZ 86405-2009

Licensee/Applicant: **Steven M. Greeley, Sole Proprietor**
Waiver and Refund Request: Late Payment Penalty
Disposition: **Denied** (47 U.S.C. § 159(c)(1); 47 C.F.R. § 1.1164)
Stations: KJJJ (FM), KNTR (FM), KVYL (FM), KNTR (AM/FM) and 6 Auxiliary Broadcasting Stations
Fees: Fiscal Year (FY) 2012 Regulatory Fee Late Fees
Date Request Filed: Jun. 11, 2015
Date Regulatory Fees Paid: Sep. 24, 2012
Date Late Regulatory Fees Paid: Jun. 5, 2015
Fee Control No.: RROG-14-00015992

Dear Mr. Greeley:

This responds to Licensee's *Request*¹ for waiver and refund of the penalties for late payment of FY 2012 regulatory fees. As we discuss below, we deny the Request because Licensee failed to establish the existence of bank error or extraordinary circumstances.

Background

In establishing the regulatory fee program mandated by Congress,² the Commission set out the relevant schedules of the annual fees and the established the procedures for, among other matters, payment, waivers, reductions, and deferral, payment, refunds, error claims, and, penalties.³

¹ Letter from Steven M. Greeley, My Radio Central, 1845 McCulloch Blvd., Suite A-15, P.O. Box 2009, Lake Havasu City, AZ 86405-2009 to Marlene Dortch, Secretary, FCC, Attn: Managing Director, Regulatory Fee Waiver/Reduction Request, 445 12th Street, SW, Room TW-B204, Washington, DC 20554 (dated Jun. 1, 2015; rec'd Jun. 8, 2015)(*Request*).

² See 47 C.F.R. § 1.1151.

³ See 47 C.F.R. Part 1, Subpart G.

On August 13, 2012, the Commission announced September 13, 2012, as the deadline for paying the FY 2012 annual regulatory fees.⁴ Under the law, 47 U.S.C. §159(c)(1), if the full amount is not received at the Commission's lockbox bank by the due date, a late payment penalty of 25% of the amount not paid accrues automatically. Specific to payment and penalties, "[a]ny late filed regulatory fee payment will be subject to the penalties set forth in section 1.1164,"⁵ which provides in relevant part, "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... not paid in a timely manner"⁶ [and] the delinquent payor's pending applications [will be subject] to dismissal,"⁷ and "[a]ny pending or subsequently filed application ... will be dismissed"⁸

Licensee enclosed a copy of the remittance voucher showing payment was received on September 21, 2012; however, he asserts he "mailed a check for full payment on September 7, 2012." He did not establish the delay resulted from bank error. The Commission's records show Licensee's payment was credited September 24, 2012, and that Licensee's late regulatory fee payments were received and credited June 5, 2015.

Standards

Each year, the Commission establishes the final day on which payment must be received before it is considered late, *i.e.*, a deadline after which the Commission must assess charges that include the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. §§ 1.1157(c)(1) and 1.1164, and additional charges of interest, penalties, and charges of collection required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. September 13, 2012, was the deadline for paying the FY 2012 annual regulatory fees.⁹ In 2011 and 2012, the Commission's rulemaking¹⁰ warned,

To be considered timely, regulatory fee payments must be received and stamped at the lockbox bank by the due date of regulatory fees. Section 9(c) of the Act requires us to impose a late payment penalty of 25 percent of the unpaid amount to be assessed on the first day following the deadline date for filing of these fees. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including those set forth in section 1.1910 of the Commission's Rules and in the Debt Collection Improvement Act of 1996 ("DCIA"). We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and section 1.1940(d) of the Commission's Rules. These administrative

⁴ See FY 2012 Regulatory Fees Due No Later Than September 13, 2012, Eastern Time (ET), Public Notice, DA 12-1295, 27 FCC Rcd 9210 (2012).

⁵ 47 C.F.R. § 1.1157(c)(1).

⁶ 47 C.F.R. § 1.1164.

⁷ 47 C.F.R. § 1.1164(c).

⁸ 47 C.F.R. § 1.1164(e).

⁹ See FY 2012 Regulatory Fees Due No Later Than September 13, 2012, Eastern Time (ET), Public Notice, DA 12-1295, 27 FCC Rcd 9210 (2012).

¹⁰ 2011 Regulatory Fee Order, 26 FCC Rcd at 10826, ¶ 36; Assessment and Collection of Regulatory Fees for Fiscal Year 2012, Report and Order, 27 FCC Rcd 8390, 8400, ¶¶ 31-32 (2012).

processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. * * * We will withhold action on any applications or other requests for benefits filed by anyone who is delinquent in any non-tax debts owed to the Commission (including regulatory fees) and will ultimately dismiss those applications or other requests if payment of the delinquent debt or other satisfactory arrangement for payment is not made [footnotes deleted].

After the deadline passes, the full amount of the regulatory fee includes the 25% late payment penalty and, if the debt remains unpaid, the balance owed includes the accrued charges of collection, interest, and penalties. If a regulatee tenders less than the full amount owed, it is a partial payment, which is applied to amount owed as set forth in 47 C.F.R. § 1.1940(f)--first to the penalties and accrued charges, and then to the principal amount owed.¹¹ Afterwards, any unpaid portion is a delinquent regulatory fee that incurs interest, penalties, and charges of collection under 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. Moreover, until the full amount is paid or satisfactory arrangements are made, the licensee remains a delinquent debtor subject to the Commission's administrative sanctions of dismissal as set forth at 47 C.F.R. §§ 1.1164(e)¹² and 1.1910.

Under 47 U.S.C. § 159 and the Commission's rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,¹³ and when the required payment is received late or it is incomplete, and it is "not excused by bank error,"¹⁴ then to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."¹⁵ Specifically, "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner."¹⁶

Discussion

For FY 2012, the deadline for paying regulatory fees was September 13, 2012.¹⁷ Licensee failed to complete payment by that date, thus the unpaid fee became a delinquent debt and, as required by the law, we imposed the charges described above.

¹¹ 47 C.F.R. §§ 1.1940(f) ("When a debt is paid in partial ... payments, amounts received ... shall be applied first to outstanding penalties and administrative cost charges, second to accrued interest, and third to the outstanding principal."), 1.1157(c)(1), 1.1164(c).

¹² 47 C.F.R. §§ 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment."), 1.1910.

¹³ 47 U.S.C. § 159(a)(1); 47 C.F.R. § 1.1151.

¹⁴ 47 C.F.R. § 1.1164.

¹⁵ 47 U.S.C. § 159(c)(1); 47 C.F.R. § 1.1164.

¹⁶ 47 C.F.R. § 1.1164.

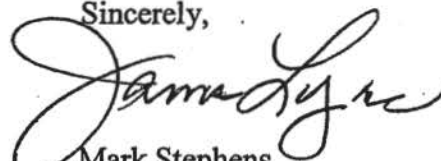
¹⁷ See FY 2012 Regulatory Fees Due No Later Than September 13, 2012, *Public Notice*, DA 12-1295 (Aug. 13, 2012).

Licensee's assertions do not present valid grounds for relief. The penalty required by 47 U.S.C. § 159(c)(1) and charges required by 31 U.S.C. § 3717 are not limited to situations where the failure to pay was knowing or willful. Indeed, neither the statute nor the Commission's regulations contemplates a waiver of or reduction in the late payment penalty based on matters such as an employee's inability to perform duties, the amount of time after the deadline within which the regulatee satisfies its payment obligations, or the absence of a reminder notice.

Every licensee is obliged to make the fee payment by the deadline. In such cases, neither the statute nor the Commission's regulations contemplates a waiver of or reduction in the late payment penalty based on the amount of time after the deadline within which the regulatee satisfies its payment obligations; indeed, the penalty for late payment applies even to situations where the deadline is missed by a short period of time.¹⁸ The penalty required by 47 U.S.C. § 159(c)(1) is not limited to situations where the failure to pay was knowing or willful. If it is to be waived, it is "only in the most extraordinary circumstances,"¹⁹ which Licensee does not establish.

If Licensee has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens
SFR Chief Financial Officer

¹⁸ See *XO Communications, LLC* (OMD, Nov. 10, 2010).

¹⁹ *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).